

Court No.3

Criminal Revision No. 87/2003

Trilok Singh

..... Revisionist.

Versus

Talvidnder Singh and another

.....Respondents.

Hon'ble Irshad Hussain, J.

This is a criminal revision U/s 397/401 Code of Criminal Procedure against the impugned judgment and order dated 19-6-2003 passed by the Sessions Judge, Nainital thereby interfering with the opinion of the Juvenile Board in regard to the age of the respondent No.1 accused Talvinder Singh who was held not to be as juvenile by the Juvenile Board.

The Juvenile Board had mainly taken into consideration the various birth certificates as well as family register (paper no. 9/17) in which the date of birth of the accused was not mentioned. Further in the column of the birth year 1983 had been mentioned. The medical examination of the accused was also conducted by the C.M.O. which is paper No. 7/1 on the record and as per this medical examination report the age of the accused was determined as about 17 years on 21.5.2002. The Juvenile Board did not accept the opinion of the C.M.O. but considering the year of birth as entered in the family register and other documents as well as the evidence adduced in the case the age was determined about 18 years and thereby the accused was not held to be a juvenile. Aggrieved by the opinion and order of the Juvenile Board an appeal under the provision of the Juvenile Justice (Care and Protection of the children), Act 2000 was preferred by the accused and the learned Sessions Judge on appreciation of the matter on record differed with the opinion of the Juvenile Board and passed the impugned judgment and order.

It is of significant that in the family register the exact date of birth of the accused has not been mentioned, but merely year of the birth of the accused named as Talvinde Singh is mentioned. Even ignoring the other certificates showing different date of birth the year of the birth of the accused in the family register does not conclusively show that the accused has attained the age of 18 years on the date of the occurrence i.e. on

30.1.2002. Had this been a case of exact date of birth mentioned in the family register only then it could have been determined as to what was the correct age of the accused on the date of the occurrence. Keeping in view the above facts and learned Sessions Judge was justified in taking into accepting the medical certificate, paper No. 7/1 and considering this it is obvious that it was almost a border line case and it could not have been conclusively held that the accused had become more than 18 years of age on the date of occurrence. Section 2 (K) of the Act define “Juvenile” as “child” means a persons who had not completed 18 years of age. Considering this definition as well as the reported decision in the case of *Rajinder Chandra versus State of Chhattisgarh and another; 2002 (1) Supreme 255* relied upon by the learned counsel for the respondent accused it is obvious that the accused is deserve to be given benefit in regard to his age as , it being a border line case. Considering the medical certificate and only the birth year of the accused in the family register I am of the view that the opinion of the learned Sessions Judge can not be said to be improper and unjustified. There were sufficient reasons to interfere with the conclusion of the Juvenile Board and this being the case there are no cogent grounds to find fault with the order of the learned Sessions Judge. There is no merit in the revision.

For the above reasons this revision is dismissed. The stay order dated 27-6-2003 is vacated.

(Irshad Hussain, J.)

Dated 1-9-2003

ISB